BAIL SLIP

The Appellant herein namely Kaliyaperumal in Crl.A.No.326/2001 (Accused in S.C.No.27/99 on the file of the Court of Additional Sessions Judge, Pondicherry) was directed to be released on bail as per order of this Court dt. 15.6.2001 and made in Crl.M.P.No.2229/2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.09.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 326 OF 2001

Kaliyaperumal .. Appellant

- Vs -

State rep. by
Inspector of Police
Town Police Station
Karaikal. .. Respondent

Appeal preferred against the conviction and sentence passed by the learned Addl. Sessions Judge, Pondicherry at Karaikal made in S.C. No. 27 of 1999 dated 20.7.1999 as stated therein.

For Appellant : Ms. R.T.Shyamala

For Respondent : Mr. A.P.Suriya Prakash, APP (Pondy)

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

The sole accused in a case of murder in S.C. No.27/99 on the file of Addl. Sessions Judge, Pondicherry at Karaikal, on being found guilty and awarded life imprisonment, has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal could be stated thus :-

P.W.1 is a neighbour of the appellant. P.W.10 is the son of the appellant; P.W.12 is the daughter-in-law of the appellant and P.W.15 is the daughter of the appellant. They were all living in Door No.40, 3rd Cross, Seniar Kulathu Street, Valatheru, Karaikal. The house property was mortgaged and it could not be redeemed for a

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long time over which there was often quarrel in the family. On the date of occurrence, namely, on 18.6.98, at about 9.00 p.m., the appellant after finishing his work came back and was sitting in a chair outside the house, while P.W.s 10, 12, 15 and the deceased were present in the house. When the deceased was inside the house, the appellant, who was sitting outside, shouted as to whether the deceased was going to redeem the property or not. He also abused in filthy language. The deceased, who is the son of the appellant, came out and abused the appellant in filthy language and he also slapped his father. Immediately, P.W.s 2, 10 and others, who were present took him inside and pacified him and advised him not to quarrel. P.W.10 even went to the extent of committing suicide by pouring kerosene saying that if such a quarrel is to go on, it is better to die. He was prevented and was pacified. Thereafter, the deceased came out of the house and suddenly, the appellant, who was sitting outside, took out a chisel, M.O.7 and stabbed the deceased on the abdomen and the deceased immediately fell down. The appellant ran away from the place.

3. The deceased was taken to the hospital by the witnesses in a rickshaw where he was examined by the doctor, P.W.2 and who pronounced him dead and issued the accident register, Ex.P-2. P.W.1, thereafter, proceeded to the Karaikal Town police station and gave a complaint, Ex.P-1, to P.W.13, the Sub-Inspector of Police on the strength of which a case came to be registered by the police in crime No.115/98 under Section 302 IPC. The express first information report, Ex.P-17 was despatched to the court.

4. On receipt of a copy of the printed first information report, P.W.16, the Inspector of Karaikal Town police station, took up investigation. He proceeded to the scene of occurrence and prepared an observation mahazar, Ex.P-8 and also drew a rough sketch, Ex.P-20. The scene of occurrence was caused to be photographed through the photographer, P.W.9. Thereafter, the investigating officer conducted inquest over the dead body of the deceased in the presence of witnesses and panchayatadars and prepared inquest report, Ex.P-10. After the inquest, he sent the dead body along with a requisition to the doctor for conducting autopsy.

5. On receipt of the requisition, P.W.4, Medical Officer attached to the Government Hospital, Karaikal, conducted autopsy on the dead body of the deceased Kannan and found the following injuries :-

> "1) A stab injury (punctured incised type) measuring 3 cms x 1 cm spindel shaped, cavity deep seen situated over right para-umbilical region 14 cms below right costal margin.
> 2) A slash injury involving only superficial layers of skin seen situated obliquely on left para-umbilical region 10 cms x 0.5 cm x 0.5 cm.
> 3) A scratch abrasion 4 cm x 0.5 cms seen over right anterior shoulder.
> 4) A scratch abrasion 4 cm x 0.5 cm seen over right

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anterior shoulder below injury No.3.
5) Two scratch abrasions 1 x 0.5 cms seen over posterior aspect of right elbow.
6) An abrasion 1 x 1 cm seen over right zygomatic area of face.
7) A superficial slash injury 2.5 cm x 0.5 cm x 0.5 cm seen above injury No.1 on abdomen.
8) An abrasion 3.5 cms x 1 cm seen on right paramedian region of epigastric region of abdomen.
9) An abrasion 2 cm x 0.5 cm seen over right paramedian region 4 cm above umbilicus."

The doctor issued Ex.P-4, the post-mortem certificate opining that the deceased would appear to have died on account of Hypovolaemic shock as a result of intra-abdominal haemorrhage.

6. P.W.16, in the meantime, continuing with his investigation, arrested the appellant. The appellant gave a confessional statement, the admissible portion of which is marked as Ex.P-18, pursuant to which M.O.7 was recovered under a mahazar, Ex.P-19. The investigating officer gave a requisition to the court to send all the material objects for analysis and the court on forwarding the same received the report from the forensic department. After completion of the investigation, the investigating officer filed the final report against the appellant. The case was committed to the court of sessions by the Judicial Magistrate. After committal, the trial court framed the necessary charges and the appellant was tried.

7. In order to substantiate the charge framed against the appellant, the prosecution marched sixteen witnesses and relied on twenty exhibits and seven material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing in the evidence of the prosecution witnesses. The appellant denied them as false. No defence witness was examined. The court, after hearing the arguments advanced by either side and on perusal of the recorded evidence, found the accused guilty as per the charge and awarded life imprisonment, which is the subject matter of challenge in this appeal before this Court.

8. Learned counsel appearing for the appellant inter alia made only two submissions. In the instant case, the witnesses examined on the side of the prosecution, who according to the prosecution are eye witnesses, are all closely related to the deceased and there are discrepancies in their evidence and, hence, the trial court should have rejected their evidence outright. Apart from that, in the instant case, the appellant also has sustained injuries and he was also treated by a doctor who has given a wound certificate in that regard, which would also clearly reveal that the aggressor in the instant case was only the deceased, who is the son of the appellant and not the appellant. Added further the learned counsel that even if the act of the accused is said to be proved, then the act of the accused would not attract the penal provisions of murder, but would fall under Exception (1) to Section

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300 IPC, since there was a quarrel and due to the sudden provocation during the quarrel, the appellant stabbed the deceased and there are materials available, which would also indicate the same, which the trial court has failed to take note of and which requires consideration by this Court.

9. On the above contentions, this Court heard the learned Addl. Public Prosecutor appearing for the State and also perused the recorded evidence, both oral and documentary.

10. The cause of death of the deceased Kannan stands established through the evidence of the doctor, P.W.4, who conducted autopsy and who issued Ex.P-4, post-mortem certificate. It is very clear from the evidence of the doctor that the deceased died an account of Hypovolaemic shock as a result of intra-abdominal haemorrhage. The said fact was not disputed by the appellant either before the trial court or before this Court. On the medical evidence this Court holds that the deceased died on account of homicidal violence.

11. The question that arises for consideration is whether it was the appellant, who committed the act. In the instant case, the prosecution has examined eye witnesses pointing that it was the appellant, who committed the crime. It is true that two of the eye witnesses have turned hostile, but their evidence has been relied on by the trial court and rightly too. There has been a graphic narration of the entire incident commencing from the father coming to the house until he attacked his son, the deceased, with M.O.7, chisel. In the instant case, the deceased was immediately taken to the hospital where he was examined and pronounced dead and the copy of the accident register is marked as Ex.P-2. Immediately thereafter, the case was registered by the police within a short span of time. Apart from that, the evidence of the eye witnesses is not only natural, cogent and acceptable, but is also convincing. Hence, the trial court was perfectly correct in accepting the evidence of the witnesses and this Court finds no reason to take a view different to the one taken by the trial court. Hence, the first contention advanced by the learned counsel for the appellant cannot be accepted.

12. Insofar as the second contention of the learned counsel, as to the nature of the act of the accused, this Court has to necessarily agree with the contention advanced by the learned counsel for the appellant. In the instant case, even as per the prosecution case there was a quarrel between the deceased and the appellant. The father, who is the appellant, was actually sitting outside the house and shouting. It was the son, who is the deceased, who went outside and slapped the appellant apart from abusing in filthy language and the father, the appellant, taking the chisel, M.O.7, stabbed the deceased. This would clearly indicate that during the quarrel in which the deceased slapped the appellant and used filthy language, due to sudden provocation the appellant took out the chisel and stabbed the deceased. In the instant case, it is clear that it was the deceased, who first

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attacked the appellant, whereby the appellant got provoked and he attacked his son. Therefore, the above act of the appellant would definitely fall within Exception (1) to Section 300 IPC and would not fall within the ambit of murder and, therefore, the benefit has got to be given to the appellant. Hence, this Court is of the considered opinion that the act of the appellant would not fall within the ambit of murder, but would fall only within Exception (1) to Section 300 IPC. Hence, the conviction of the appellant under Section 302 IPC is set aside and instead this Court finds him guilty under Section 304 (1) IPC.

13. Now coming to the question of punishment awarded, the trial court has imposed imprisonment for life as the punishment for the offence under Section 302 IPC. Since the conviction of the appellant under Section 302 IPC has been set aside, the consequent sentence imposed on the appellant by the trial court has also got to be set aside and accordingly it is set aside. It is brought to the notice of this Court that the appellant, who is the father of the deceased, is aged seventy-one years. It is true that at the time of the act when the appellant attacked his son with M.O.7, it would have been well within his knowledge that his act would be sufficient to cause death. But this Court taking a lenient view and on considering the age of the deceased, sentences the appellant to undergo rigourous imprisonment for a period of five years, which would be suffice to meet the ends of justice.

14. In result, the conviction and sentence imposed on the appellant by the trial court under Section 302 IPC is set aside and instead the appellant is found guilty under Section 304 (1) IPC for which he is directed to suffer rigourous imprisonment for a period of five years. With the above modification in conviction and sentence, this criminal appeal is dismissed. It is reported that the appellant is on bail. The learned Sessions Judge is directed to take steps to secure the presence of the appellant and commit him to prison to serve the remaining period of sentence imposed upon him.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1) The Addl. Sessions Judge, Pondicherry at Karaikal.
2)-Do- Thro' The Principal Sessions Judge, Pondicherry.
3) The Judicial Magistrate, Karaikal
4)-do- Through the Chief Judicial Magistrate,
Karaikal at Pondicherry
5) The Chief Secretary, Govt. of Pondicherry, Pondicherry.
6) The Inspector General of Police, Pondicherry.
7) The Public Prosecutor of Pondicherry, High Court, Madras.
8) The Superintendent of Central Prison, Pondicherry.
9) The Inspector of Police, Town Police Station, Karaikal.

1 cc to Ms. R.T.Shyamala, Advocate, SR. 40129
1 cc to Office of the Govt. Pleader, cum Public Prosecutor,
Pondicherry, High Court Madras. SR. No. 40003

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